

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DOXO, INC., a corporation,

STEVE SHIVERS, individually and as an
officer of DOXO, INC., and

ROGER PARKS, individually and as an officer
of DOXO, INC.,

Defendants.

CASE NO. 2:24-00569-JNW

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery, the protection it affords from public
 2 disclosure and use extends only to the limited information or items that are entitled to confidential
 3 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
 4 confidential information under seal.

5 2. “CONFIDENTIAL” MATERIAL AND SENSITIVE PERSONAL INFORMATION

6 “Confidential” means documents and tangible things that may be produced or otherwise
 7 exchanged that

- 8 (1) The designating party reasonably believes contain, describe, or disclose
 9 sensitive, non-public confidential information, such as
 10 a. court records, whether in this District or other courts, currently
 11 maintained under seal;
 12 b. information subject to a non-disclosure or confidentiality
 13 agreement;
 14 c. employee personnel information;
 15 d. a non-party’s commercially sensitive information, trade secrets, or
 16 competitive or strategic initiatives that are not readily ascertainable
 17 and for which the designating party has taken reasonable steps to
 18 maintain confidentiality; and
 19 e. Customer Information (as defined below); or

- 20 (2) The designating party’s own commercially sensitive
 21 information, such as (a) financial or accounting information; (b)
 22 commercially sensitive internal communications or information; and (c)
 23 business negotiations, transactions, and dealings with non-parties.

24 “Sensitive Personal Information” means any:

- 25 (1) Social Security number;
 26 (2) Sensitive health-related data including medical records;

- 1 (3) Biometric identifier;
- 2 (4) Any one or more of the following when combined with an
- 3 individual's name, address, or phone number: (a) date of
- 4 birth, (b) driver's license or other state identification
- 5 number, or a foreign equivalent, (c) military identification
- 6 number, (d) passport number, (e) financial institution
- 7 account number, or (f) credit or debit card number;
- 8 (5) An individual's name, if that individual is a minor;
- 9 (6) An individual's telephone number, email address, or home
- 10 address, unless relevant to a claim or defense of any party;
- 11 or
- 12 (7) Other sensitive information relating to an individual entitled
- 13 to confidential status under applicable law or by order of this
- 14 Court.

15 "Customer Information" means any non-public personal information regarding customers,

16 including any lists, descriptions, or other grouping of customers that are derived using non-public

17 personal information.

18 3. SCOPE

19 The protections conferred by this agreement cover not only confidential material (as

20 defined above) and Sensitive Personal Information but also (1) any information copied or extracted

21 from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential

22 material and Sensitive Personal Information; and (3) any testimony, conversations, or

23 presentations by parties or their counsel that might reveal confidential material or Sensitive

24 Personal Information.

25 However, the protections conferred by this agreement on confidential material do not cover

26 information that is in the public domain or becomes part of the public domain through trial or

1 otherwise.

2 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

3 4.1 Basic Principles. A receiving party may use confidential material or Sensitive
4 Personal Information that is disclosed or produced by another party or by a non-party in connection
5 with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential
6 material and Sensitive Personal Information may be disclosed only to the categories of persons
7 and under the conditions described in this agreement. Confidential material and Sensitive Personal
8 Information must be stored and maintained by a receiving party at a location and in a secure
9 manner that ensures that access is limited to the persons authorized under this agreement.
10 Confidential material and Sensitive Personal Information shall be treated as confidential and
11 withheld from the public record pursuant to 16 C.F.R. § 4.9(c).

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
13 by the court or permitted in writing by the designating party, a receiving party may disclose any
14 confidential material only to:

15 (a) the receiving party’s counsel of record in this action, as well as employees
16 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
19 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
20 designated;

21 (c) experts, consultants, or contractors to whom disclosure is reasonably
22 necessary for this litigation (including their employees and contractors) and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the court, court personnel, and court reporters and their staff;

25 (e) copy or imaging services retained by counsel to assist in the duplication of
26 confidential material, provided that counsel for the party retaining the copy or imaging service

1 instructs the service not to disclose any confidential material to third parties and to immediately
2 return or destroy all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
5 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
6 transcribed deposition testimony or exhibits to depositions that reveal confidential material may
7 not be disclosed to anyone except as permitted under this agreement; and

8 (g) any other witnesses whose deposition has been noticed or persons whom
9 the disclosing party believes in good faith may be witnesses (and their respective counsel);

10 (h) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information (and that person’s
12 counsel); and

13 (i) as authorized by this Court.

14 4.3 Other Disclosures Authorized by Law. Notwithstanding the limitations set forth in
15 Section 4.2 and subject to taking appropriate steps to preserve confidentiality, Plaintiff may
16 disclose confidential material and Sensitive Personal Information to other governmental entities,
17 as provided by 16 C.F.R. §§ 4.9-4.11, 15 U.S.C. §§ 46(f), 57b-2. Such entities include officers
18 and employees of Federal or State law enforcement agencies (including duly authorized employees
19 of Plaintiff) and congressional committees. Any officers or employees of Federal or State law
20 enforcement agencies who will have access to such confidential material and Sensitive Personal
21 Information must maintain them in confidence, use them only for official law enforcement
22 purposes, and sign the “Acknowledgement and Agreement to Be Bound (Government Entity)”
23 (Exhibit B). Plaintiff shall provide a copy of the signed Exhibit B to Defendants prior to providing
24 any confidential material to a Federal or State law enforcement agency unless the agency requests
25 that defendant not be notified.

26 4.4 Filing Confidential Material. Before filing confidential material or discussing or

1 referencing such material in court filings, the filing party shall confer with the designating party,
2 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
3 remove the confidential designation, whether the document can be redacted, or whether a motion
4 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
5 designating party must identify the basis for sealing the specific confidential information at issue,
6 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
7 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
8 the standards that will be applied when a party seeks permission from the court to file material
9 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
10 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
11 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
12 the strong presumption of public access to the Court's files.

13 4.5 Use of Sensitive Personal Information in Litigation. No party or non-party may
14 publicly disclose any Sensitive Personal Information without prior approval of this Court. A party
15 or non-party seeking to file Sensitive Personal Information publicly in the docket of any action
16 must redact such information before filing, unless the Sensitive Personal Information is relevant
17 and necessary for the Court's understanding of the issues presented. In such circumstances, a party
18 or non-party must file any unredacted Sensitive Personal Information under seal concurrently with
19 a motion to seal the information.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this agreement must take
23 care to limit any such designation to specific material that qualifies under the appropriate
24 standards. The designating party must designate for protection only those parts of material,
25 documents, items, or oral or written communications that qualify, so that other portions of the
26 material, documents, items, or communications for which protection is not warranted are not swept

1 unjustifiably within the ambit of this agreement.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
3 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
4 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
5 and burdens on other parties) expose the designating party to sanctions.

6 If it comes to a designating party's attention that information or items that it designated for
7 protection do not qualify for protection, the designating party must promptly notify all other parties
8 that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations for Information Produced in This Litigation.

10 Except as otherwise provided in this agreement (see, *e.g.*, section 5.2(b) below), or as otherwise
11 stipulated or ordered, disclosure or discovery material that qualifies for protection under this
12 agreement must be clearly so designated before or when the material is disclosed or produced.

13 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
14 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
15 the designating party must affix the word "CONFIDENTIAL" to each page that contains
16 confidential material. If only a portion or portions of the material on a page qualifies for protection,
17 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
18 markings in the margins).

19 (b) Testimony given in deposition or in other pretrial proceedings: the parties
20 and any participating non-parties must identify on the record, during the deposition or other pretrial
21 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
22 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
23 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
24 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
25 at trial, the issue should be addressed during the pre-trial conference.

26 (c) Other tangible items: the producing party must affix in a prominent place

1 on the exterior of the container or containers in which the information or item is stored the word
2 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
3 the producing party, to the extent practicable, shall identify the protected portion(s).

4 5.3 Designations for Information Produced to Plaintiff During Investigation. Except as
5 otherwise provided in this agreement, or as otherwise stipulated or ordered, material that qualifies
6 for protection under this agreement and that was provided to Plaintiff during its investigation
7 leading to this action with the designation “CONFIDENTIAL” is will be treated as confidential
8 under this Order.

9 5.4 Manner and Timing of Designations for Other Information in Plaintiff’s
10 Possession. For any other material in Plaintiff’s possession that is entitled to confidentiality under
11 the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning
12 documents in the possession of Plaintiff, such material shall be treated as confidential material for
13 purposes of this Order, except insofar as the Court makes or has made a determination of non-
14 confidentiality or a challenge under the procedures described in Section 6 is successfully
15 employed. For purposes of Section 6 relating to such materials, the party who submitted the
16 material to Plaintiff shall be deemed the “designating party.”

17 5.5 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
18 designate qualified information or items does not, standing alone, waive the designating party’s
19 right to secure protection under this agreement for such material. Upon timely correction of a
20 designation, the receiving party must make reasonable efforts to ensure that the material is treated
21 in accordance with the provisions of this agreement.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
26 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding confidential
5 designations or for a protective order must include a certification, in the motion or in a declaration
6 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
7 affected parties in an effort to resolve the dispute without court action. The certification must list
8 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
9 to-face meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention within 21 days of the challenge being made or an alternative deadline agreed upon by
12 the parties, the designating party may file and serve a motion to retain confidentiality under Local
13 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
14 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
15 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
16 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
17 the material in question as confidential until the court rules on the challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
19 LITIGATION

20 If a party is served with a subpoena or a court order issued in other litigation that compels
21 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
22 must:

23 (a) promptly notify the designating party in writing and include a copy of the
24 subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order to
26 issue in the other litigation that some or all of the material covered by the subpoena or order is

1 subject to this agreement. Such notification shall include a copy of this agreement; and

2 (c) cooperate with respect to all reasonable procedures sought to be pursued by
3 the designating party whose confidential material may be affected.

4 If the designating party timely seeks a protective order from the court from which the
5 subpoena or order issued, the party served with the subpoena or court order shall not produce any
6 information designated in this action as confidential before a determination by the court from
7 which the subpoena or order issued, unless the party served with the subpoena or court order has
8 obtained the designating party's permission.

9 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
11 material to any person or in any circumstance not authorized under this agreement, the receiving
12 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
13 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
14 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
15 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
16 Bound" that is attached hereto as Exhibit A.

17 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
18 MATERIAL

19 When a producing party gives notice to receiving parties that certain inadvertently
20 produced material is subject to a claim of privilege or other protection, the obligations of the
21 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
22 is not intended to modify whatever procedure may be established in an e-discovery order or
23 agreement that provides for production without prior privilege review. The parties agree to the
24 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

25 10. NON TERMINATION AND RETURN OF DOCUMENTS

26 Within 60 days after the termination of this action, including all appeals, each receiving

1 party must return all confidential material and Sensitive Personal Information to the producing
2 party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree
3 upon appropriate methods of destruction.

4 Notwithstanding this provision:

5 (a) counsel are entitled to retain one archival copy of all documents filed with
6 the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits,
7 expert reports, attorney work product, and consultant and expert work product, even if such
8 materials contain confidential material or Sensitive Personal Information;

9 (b) Plaintiff shall retain, return, or destroy confidential material or Sensitive
10 Personal Information in accordance with 16 C.F.R. § 4.12, including retaining such information to
11 assist with ongoing law enforcement or bankruptcy matters, enforcement of any final orders
12 entered in this action, providing redress to consumers (if ordered by the Court), or any policy or
13 research matters consistent with the Commission's mission, provided that the Commission
14 continues to take all appropriate steps to protect the confidentiality of the materials;

15 (c) any law enforcement agency other than Plaintiff that has received copies of
16 any confidential material or Sensitive Personal Information may retain such information to assist
17 with other ongoing law enforcement matters, provided that the law enforcement agency continues
18 to take all appropriate steps to protect the confidentiality of the materials; and

19 (d) any congressional committee may maintain copies of confidential materials
20 and Sensitive Personal Information obtained from the Commission as required under 15 U.S.C. §
21 57b-2 and 16 C.F.R. § 4.11(b).

22 The confidentiality obligations imposed by this agreement shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: August 26, 2024

/s/ James Doty

3 James Doty (NY #4552550)
4 Edward Smith (DC #1725265)
5 Federal Trade Commission
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7 Washington, DC 20580
8 202-326-2628; jdoty@ftc.gov (Doty)
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10 Attorneys for Plaintiff
11 FEDERAL TRADE COMMISSION

12 Dated: August 15, 2024

/s/ Roger M. Townsend

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Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents, electronically stored information (ESI) or information, whether inadvertent or
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
6 documents, including the attorney-client privilege, attorney work-product protection, or any other
7 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
8 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
9 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
10 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
11 segregation of privileged and/or protected information before production. Information produced
12 in discovery that is protected as privileged or work product shall be immediately returned to the
13 producing party.

14
15 Dated this 4th day of September, 2024.

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19 Jamal N. Whitehead
20 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Federal Trade Commission v. Doxo, Inc., et al.*, No. 2:24-cv-00569-JNW. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

EXHIBIT BACKNOWLEDGMENT AND AGREEMENT TO BE BOUND (GOVERNMENT ENTITY)

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of *Federal Trade Commission v. Doxo, Inc., et al.*, No. 2:24-cv-00569-JNW. I agree to
 comply with and to be bound by Section 4.3 of the Stipulated Protective Order and I understand
 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
 item that is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____